IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

## CRP.No. 1313 of 2004 F

AGAINST THE JUDGMENT DATED 14.7.2004 IN CMA.NO.369/2001 OF ADDL. DISTRICT COURT, THODUPUZHA CONFIRMING THE ORDER NO.A2-5747/98 DATED 23.6.2001 OF THE DIVISIONAL FOREST OFFICER, KOTTAYAM.

**REVN. PETITIONER: APPELLANT**

C.G.DAS, S/O.GOVINDAN,
CHEMPAKASSERIL, KUNDALAMPARA,
KATTAPPANA, IDUKKI.

BY ADV. SRI.C.C.THOMAS

**RESPONDENTS: RESPONDENTS:**

1. THE DIVISIONAL FOREST OFFICER,
KOTTAYAM.

2. THE FOREST RANGE OFFICER,
KANCHIYAR,IDUKKI DISTRICT.

BY ADV. GOVT.PLEADER SRI.M.P.PRAKASHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**I.A.NO.3392/2004 IN C.R.P.NO.1313/2004 F**

DISMISSED

15/11/2007 SD/- K.T.SANKARAN, JUDGE

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AHZ/

**K.T.SANKARAN, J.**

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**C.R.P. NO. 1313 OF 2004 F**

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**Dated this the 15th day of November, 2007**

**O R D E R**

The Divisional Forest Officer, Kottayam, who is the Authorised Officer under the Kerala Forest Act, passed an order, dated 23.6.2001, confiscating the vehicle belonging to the petitioner, namely, jeep No.KL1-5297, under Section 61A of the Kerala Forest Act. The order, dated 23.6.2001, was challenged by the petitioner before the Court of the Additional District Judge, Thodupuzha in C.M.A.No.369 of 2001. The learned District Judge dismissed the appeal finding that the order of confiscation was legal and proper.

2. On 2.9.1998 at 6 a.m., the Forest Range Officer, Ayyappancoil and staff intercepted the jeep belonging to and driven by the petitioner. It was found that timber of 'Kulamavu' species were there in the vehicle. A case was registered as O.R.18/98 of Kanchiyar Forest Station. The vehicle was seized. After investigation, a final report was submitted by the investigating officer.

3. During the course of investigation, the vehicle was released to the petitioner on 29.10.1998 as per the order passed by this Court in O.P.No.17972 of 1998. The vehicle was valued at Rs.35,000/- and sufficient security was offered by the petitioner.

4. Proceedings for confiscation under the Kerala Forest Act were initiated. Notices were issued to the petitioner and he was afforded full opportunity to file statements, adduce evidence and to cross examine the witnesses. The petitioner appeared before the Forest Officer and filed statement, wherein he admitted of having transported timber logs. He put forward a contention that he was requested by one Thankachan to take the load, but no evidence was adduced by him to prove the said contention. On inspection of the site from where the trees were cut, it was found that the trees were felled from Cardamom Hill Reserve and the occupier of the land was not entitled in law to cut and remove the trees. The petitioner raised a contention that he was not aware of the illicit nature of the transportation of timber. This case was not accepted as there was no acceptable material before the Authorised Officer to come to a conclusion that the petitioner had taken all precautions before transporting the timber. Evidently, there was no pass and the petitioner has no case that the timber was transported with a valid pass. The transportation of timber is admitted. It is not disputed that the trees were cut from Cardamom Hill Reserve. The place of cutting is exactly the same place from where the petitioner, as stated, has loaded the timber. There is nothing to indicate that the mahazar was not prepared in a proper manner. Though an opportunity was afforded to the petitioner to cross examine the witnesses, he did not appear on the date fixed for cross examination. All the facts and materials were considered by the

Authorised Officer and it was held that the petitioner transported the timber illegally and without taking any precaution to ensure that there was a valid transportation of timber.

5. On appeal by the petitioner, the learned District Judge considered all the facts and circumstances of the case with reference to the records made available before him and came to the conclusion that the Aurhorised Officer was justified in passing the order of confiscation.

6. The complicity of the petitioner and his guilty intention was clear, as held by the Authorised Officer. Therefore, the Authorised Officer was justified in confiscating the vehicle under Section 61A of the Kerala Forest Act.

7. Learned counsel for the petitioner relied on the Division Bench decision in **D.F.O.** v. **Krishnan Nair** (2002 (1) KLT 657). He invited my attention to the observations made in paragraph 9 of the judgment that it is not necessary in all cases that the officer should confiscate the vehicle under Section 61A of the Act. Discretion should be exercised taking into account the facts of each case. In **D.F.O**. v. **Krishnan Nair,** the vehicle involved was a car. The car was hired by a person and he travelled in that car. The car was taken as a pilot vehicle to another vehicle, in which the

contraband was being transported. The fact situation in the present case is different. The vehicle belonged to the petitioner and it was driven by him. The vehicle was hired for transporting timber without valid pass. The act cutting of trees and removal of timber was illegal. The petitioner has not explained the steps he has taken to ascertain the legality of the transportation of timber. He has not adduced any evidence to establish that he has taken sufficient precautions.

8. Learned Special Government Pleader for forests, in answer to the submission of the counsel for the petitioner that value of the timber is relevant in considering the question whether the vehicle having a higher value should be confiscated, relied on the decision in **Joy Joseph** v. **D.F.O., Kottayam** (2005 (2) KLT 456), wherein it was held that:

> "S.61A(2) states that where an Authorised Officer seizes the property of the Government, and if the property is produced before the Authorised Officer if he is satisfied that a forest offence has been committed in respect of such property, he may order confiscation of the property so seized together with all tools. No power has been conferred on the Forest Officer to release the vehicle in lieu of confiscation. On a bare reading of S.52, 61A and 68 would show that the vehicle liable for confiscation may be released on payment of the value of the vehicle and not otherwise. Value of the forest produce confiscated is irrelevant and the accused has no legal right to insist that the vehicle be released on payment of fine in lieu of confiscation..."

9. The Authorised Officer as well as the District Judge have

considered all the relevant facts and the contentions put forward by the petitioner. The Authorised Officer thought it fit, on consideration of the facts, that confiscation of the vehicle was necessary and the subjective satisfaction of the Authorised Officer was found to be correct by the learned District Judge. No grounds are made out for interference in Revision.

The Civil Revision Petition lacks merits and it is accordingly dismissed. No order as to costs.

**(K.T.SANKARAN)**
**Judge**

ahz/